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INFILTRATION OF NEW TECHNOLOGIES INTO THE HUNGARIAN EVIDENCE LAW RELATING TO CIVIL CASES

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Abstract: The article covers the topic of what challenges the Hungarian evidentiary system has faced in recent years in civil cases, primarily from the direction of information technology. The paper provides a comprehensive overview of the responses received from the legislator and where this did not resolve some issues, what kind of challenge this posed for judicial practice. It also provides a brief description of some legal cases where Hungarian courts responded to IT challenges. It confronts the reader with the problems that are still unsolved or are expected to appear in the near future. In the latter area, it is primarily about the questions raised by artificial intelligence.

Keywords: Hungary, civil procedure, evidence, information technology, artificial intelligence.

General Rules on (traditional or physical) Evidence[1]

Evidentiary proceedings in Hungarian civil litigation are based on the principle of the free evaluation of evidence; they are not regulated by strict methodological rules. It is left to the court to decide which means of proof it will use in order to establish the facts of the case and the application of which method of proof it will find suitable for this purpose; in the free evidentiary system the evaluation of the probative force of the particular evidence is committed to the court's discretion.

In the *new Code of Civil Procedure* (HCCP – Act CXXX of 2016), entered into force on 1 January 2018) this is formulated as follows: unless the Act provides otherwise, in civil actions the courts are not bound by formal rules of evidence, particular methods of evidence or the use of particular means of proof, they may freely use the pleadings of the parties and all other evidence suitable for establishing the facts of the case [§ 263(1) HCCP]. These provisions shall not affect statutory presumptions, including the legal rules according to which some circumstance must be regarded true until the opposite is proved.

1This paper is based on the National Report of the author on "Current Situations and Problems regarding New Types of Evidence – Hungary" made for the the 16th World Congress of the IAPL (Kobe, 2-5 November 2019), which has been considerably updated and supplemented.

These statements do not fully prevail in Hungarian procedural law, as limitation is caused by certain restrictive elements in this respect, thus, for example, the legally regulated probative force of public documents and certain type of private documents having full probative force, the statutory presumptions and the rules relating to the burden of proof, court judgments passed in criminal cases within a circle defined by § 264 (1) of the HCCP and prohibitions relating to evidence. The new HCCP introduced a regulation by § 264 (2), which is at the heart of the debate: a court proceeding in a matter falling within the scope of the HCCP shall be bound by a final and binding decision adopted by an administrative court regarding the legality of administrative activities.

According to § 279 HCCP the court establishes the facts of the case based on the comparison of the parties' pleadings and the evidence presented to the court during the evidentiary proceedings; the court assesses all the evidence in its entirety and adjudges it based upon its conviction. If the statements of fact made by the party and his representative in the proceedings are inconsistent, it shall be assessed by the court as if the statements of fact made by the party were inconsistent. The amount of damages or other debt shall be determined by the court at its own discretion and on the basis of all circumstances

of the case, if it cannot be determined on the basis of an expert opinion or other piece of evidence.

Balancing is a procedural act performed by the court exclusively. However, the free evaluation of evidence does not result in a judge's arbitrary decision. A guarantee for controlling judicial discretion is constituted by the judge's obligation to provide justification for his or her decision. Consequently, in the judgment the judge must present the established facts of the case with the indication of the related evidence; reference has to be made to the legal regulations on which the court's judgment is founded. Brief mention should be made of the circumstances given priority by the court during the evaluation of evidence, and finally the reasons must be indicated as to why the court did not find some fact proven or why it disregarded the offered evidence.

Free evaluation of evidence is laid down by the HCCP as a general rule, but there are cases when the probative force of some means of proof may be determined in advance, in the abstract. In such cases, based on the Act, during the taking of evidence restrictive elements are applicable, which may only be found as exceptions in modern codes of civil procedure. For example in the case of public documents. A paper-based or electronic document issued by the court, a notary public or other authority or administrative organ within their competence and in

due form as a public document fully proves the measure or decision laid down by it, the reality of the data and facts certified by it, the making of the statement contained in the document and also the date and the way this is done. The document deemed a public document based on another legal instrument has the same probative force (§ 323 HCCP). If any of the above requirements are not met, the document cannot be considered a public document, which, however, does not exclude the possibility of evaluating it as a private document.

Although the probative force of the public document is partly founded on the authority of the person issuing it, another important ground for it is the procedure preceding the issuance of the document. (Hámori 1970a, p. 611) Thus, apart from the person issuing the document it is also of crucial importance-when establishing whether a document may be evaluated as a public document-whether the person or authority entitled to issue the public document has issued the document concerning a matter falling within the scope of that person's authority. Formal requirements relating to public documents vary depending on the type of document.

The public document must be considered authentic until the opposite is proved; nevertheless, the court may-if it finds this necessary-address the issuer of the document ex officio to make a statement concerning the authenticity of the document [§

323(2) HCCP]. In accordance with the presumption of authenticity there is no need to prove the authenticity of the public document in case of an apparently faultless document. The document is dubious if it contains, for example, deletions, insertions, gaps, changes executed in violation of the relevant legal rules, and if it has other external deficiencies (e.g. tears, spots, faded writing, etc.). The presumption of authenticity reverses the burden of proof in the event of a party's use of a public document as evidence, in which case the opposing party must prove that the original unadulterated public document is counterfeit or has been falsified. A document is considered counterfeit if it was not issued by the issuer, as opposed to a falsified document, which is authentic as a matter of fact-that is, it was issued by the issuer-but subsequent unlawful changes have been made to it. All documents, including public documents, may be subject to counterproof, but only if this is not excluded or limited by statute [§ 323(6) HCCP]. At present, Hungarian law does not contain any rule that would exclude or limit counterproof. Documentary evidence may be rebutted by showing that the document is not suitable for proving the particular fact. Rebuttal may be founded on formal deficiency, external irregularity or it may be directed against the substantive probative force of the document. In the first case just mentioned, the aim to be achieved is to prove that the document is

counterfeit or falsified or it was not properly executed, while in the second case, it must be proved that the apparently unobjectionable document does not correspond to the intentions of the person making the declaration (Balogh, 1935). Rebuttal may extend to the following: the decision contained in the public document was not passed, the measure contained in the document was not taken, the statement was not made, or these events did take place but at a time, place or in a form different from the one indicated in the document, etc. (Gátos, 1999). For rebuttal, any means of proof may be used; however, the rebuttal of public documents is rarely successful in practice.

As another restrictive element in the system of the free evaluation of evidence can be mentioned that with regard to a fact that can be proved from documents, the court may ignore other forms of taking evidence [§ 320(5) HCCP].

The witness is perhaps considered the most frequent means of proof. However, because of the subjective nature of the testimony, a certain degree of lack of trust may be observed toward witnesses, which is not a new problem and which justifies the incorporation of certain guarantees. The witness is a person other than the litigants who gives an account of past facts before the court (Kengyel, 2008), usually perceived by him directly. Nevertheless, it may happen that the witness is examined concerning past facts that he has become familiar with

not through direct perception but through hearsay. Hungarian law-in contrast with e.g. the common law system-does not exclude the application of hearsay witnesses; on the other hand, the reliability of the testimony is subject to judicial evaluation.

Types of evidence may be either persons or things that-because of their state or with regard to their conduct-carry and convey information to the court about the evidence. Means of proof-depending on whether they originate in a person or the state of a thing- may be classified as follows: personal evidence (witness, expert) or real evidence (objects for inspection, documents). The special characteristic of personal evidence is that in each case

> "some person's content of consciousness is conveyed to the court, the evidence has passed through the given person's psyche, particularly, his perceptive and volitional functions. Thus the psyche is present in the evidence between the factual proof and the fact to be proven. As opposed to this, in case of real evidence, the thing itself-or maybe man as a physiological or psychical being-incorporates or embodies the fact to be proven. That is, real evidence-taken in a general sense-means all things perceivable in the objective world the nature of which-including their relation to other things-allows to establish relevant factual circumstances or to draw inferences about them". (Hámori, 1970b)

The court may use any other method of taking evidence which is suitable for establishing significant facts in the action, if it seems expedient with respect to the adjudication of the legal dispute, unless the respective method of taking evidence would violate public order (§ 267 HCCP). The means of proof shall be suitable for the court to obtain evidence that can be used to establish the significant facts of the action and that may be taken into account during deliberation. As a means of proof is mentioned in the act:

the witness, expert, document, image recording, sound recording, audio-video recording and other means of physical evidence may especially be used (§ 268 HCCP).

The old HCCP (Act III of 1952) contained only a few provisions the violation of which would result in the unlawfulness of evidence. With regard to the use of unlawfully obtained evidence, the HCCP did not formulate generally applicable clauses of the type contained in the Act on Criminal Procedure. Prohibitions were concentrated around the witness statement and expert opinion, but in other areas the lack of general and special prohibitions resulted in uncertainty concerning such illegalities arising out of litigation (Kengyel, 2006) as e.g. the stealing of documents or obtaining an electronic letter through unauthorised access to the e-mail system. The new HCCP regulates as a new legal institution the exigency of providing evidence, the admissibility of illicit means of evidence in the lawsuit, and the probative value of evidence from other procedures used in civil proceedings. According to the explanatory memorandum to the Draft Bill, the exigency of providing evidence (incapacity to prove) means a regulatory solution to strikingly information-asymmetric situations, where the adversary of the party having the burden of proof has the relevant evidence in his possession and therefore he is able to make it difficult or impossible to prove the case successfully. The legal consequence of the

exigency of providing evidence is: the court establishes the existence of the fact, if the judge has no doubt in this regard. The new HCCP regulates the frames of admissibility of unlawfully obtained means of evidence, but does not lay down an absolute prohibition concerning them. Pursuant to § 265, the facts in a case shall be proven by the party having an interest in the fact being accepted by the court as the truth (hereinafter "interest to prove"), and the consequences of not proving or unsuccessfully proving such fact shall also be borne by said party. The party is in a situation of exigency of providing evidence, if he substantiates that *a)* the data indispensable for his motion to present evidence are in the exclusive possession of the party with opposing interests, and he verifies that he took the necessary measures to obtain such data, *b)* it is not possible for him to prove the facts alleged, but the opposing party can be expected to supply evidence to disprove his allegations of fact, or *c)* the success of taking evidence was hindered by the party with opposing interests in a culpable manner, and the other party does not substantiate the opposite of those specified in points *a)* to *c)*. If the party is under the exigency of providing evidence, the fact to be proven by the party affected by such exigency may be accepted by the court as the truth, if it does not have any doubt regarding its veracity.

Pursuant to § 269 of the HCCP, a means of proof, or any separable part of it, is unlawful and cannot be used in the action, if *(i)* it was obtained or produced by violating or threatening a person's right to life and physical integrity, *(ii)* it was produced by any other unlawful method, *(iii)* it was obtained in an unlawful manner, or *(iv)* its submission to the court would violate personality rights. A means of proof shall be considered evidently unlawful if that can be clearly established as a fact on the basis of evidence and data available. The evidently unlawful nature of a means of proof is to be taken into account by the court ex officio, and the parties are to be informed accordingly. If a means of proof is not evidently unlawful, its unlawful nature shall be notified without delay by the party opposing the party submitting the means of proof. A party may only rely on the unlawfulness of a means of proof following the order closing the preparatory phase, if through no fault of his own he became aware of it only later, and he notifies it to the court within fifteen days after having become aware of it. With the exception of the case described in point *(i)* above, the unlawful means of proof may be taken into account by the court exceptionally and with due regard to the particular nature and extent of the violation, the legal interests affected by the violation, the impact of the unlawful piece of evidence on establishing the facts, the weight of other available pieces of evidence and all other

circumstances of the case. If an unlawful means of proof cannot be used and the proving party cannot prove a significant fact in the case in any other way, the court may apply the rules pertaining to the exigency of providing evidence.

The comprehensive amendment of the HCCP which entered into force on 1 January 2021 supplemented Section 269 with paragraph (7), pursuant to which the use of an unlawful means of proof during the lawsuit does not affect the party's criminal, administrative or civil liability. The proving party must be warned about this fact.

Who takes the initiative and plays an active role during the taking of evidence in the civil lawsuit has a decisive effect on the structure of the lawsuit. The taking of evidence is based on the *principle of party control:* it is the parties' responsibility to find the means of proof and present the facts and evidence that are relevant for the resolution of the case to the court. The court is entitled to order the taking of evidence *ex officio* only based on special authorization (Harsági, 2015).

The obligation to produce the evidence necessary for the adjudication of the legal dispute-unless it is provided otherwise by statute-forms part of the duties of the parties. Thus, effective statutory regulation basically expects active parties in finding and supplying evidence. Only in exceptional cases is it possible for the court to assume the initiative during the evidentiary

proceedings in a civil lawsuit: the court may order the taking of evidence ex officio only if it is permitted by the Act [§ 276(2) HCCP]. In the absence of the party's express request for the taking of evidence, the court shall not take evidence ex officio. This may occur only if it is expressly permitted by legal regulation. (Bírósági Határozatok, 1999).

A request for the performance of the taking of evidence or the court's decision ordering the taking of evidence shall not be binding upon the court. The court shall not order the taking of evidence if deemed unnecessary for rendering a decision in the dispute.

A basic principle the content of which contrasts with that of the principle of party control is the principle of officiality (*ex officio* proceedings), which is rarely afforded a role in modern codes of civil procedure. The principle of ex officio proceedings prevails, for example, in the following situations.

According to § 323(2) HCCP the court may *ex officio* call upon the entity issuing the public document to make a statement regarding its authenticity. Pursuant to § 434 (3) and § 492 (2) of the HCCP, the court may order ex officio the taking of any evidence it considers necessary in actions related to personal status (as action on custodianship, a matrimonial action, an action for the establishment of parentage, an action concerning

parental custody, or an action related to the termination of adoption) and in actions for the maintenance of a minor child.

Rules on New Types of Evidence

The application of IT in courts in Hungary is still characterized by a more traditional approach. IT is mainly applied in practice in the electronic administration of court affairs, electronic service. Further possibilities of electronic data processing in the civil justice are the following*:* the possibility of processing texts; the setting up and use of data bases (e.g. the electronic data base of judgments, publication on the court's electronic bulletin board on the internet), the possibility of audio-or video conferences, the creation of e-files (records), etc. Creating the legal environment for the electronic signature made the use of the electronic form of documents possible. Partly automated proceedings or almost completely automated proceedings are used rare (e.g. order for payment proceedings).

The issues giving rise to debate concerning of electronic documents, concern the integrity of their content and the authenticity of such documents. Moreover, one must find answers to further specific questions, e.g. concerning the presentation and safe storage of electronic documents. The problems emerging in this field are different from the ones arising in connection with 'classic' documentary evidence.

The legal regulation of electronic documents was carried out in two steps in Hungary. In summer 2001 the Hungarian Parliament passed the Bill on electronic signatures presented to it. The Act Nr. XXXV. of 2001 on electronic signature followed the Directive 1999/93/EC in its regulation, which has led to a comprehensive modification of the chapter of the old Code of Civil Procedure on documents. The second step in this development was constituted by the establishment of the legal frames for electronic legal documents, which, as a matter of fact, had been made necessary by the reregulation of company registration procedures. The Directive 68/151/EEC and the modifying Directive 2003/58/EC provided the questions of company records with a new basis. Act LXXXI of 2003 on Online Company Registration and on Reviewing Company Documents in Electronic Format, which transposed the provisions of the Directive into Hungarian law, laid the foundations for the creation of electronic public documents through the modification of several Acts. (Harsági, 2003) Few years later the legislator took new impetus and, by Act LII of 2009 on Electronic Service of Documents, created the legal background for the general applicability of electronic service of documents in the administration of justice. At the same time, a new chapter was inserted into the old Code of Civil Procedure on electronic communication. The rules were to enter into force

at different times. In 2010 a substantial part of the original dates of commencement was postponed.

Hungarian civil procedure law, which otherwise rather tends to accept the narrower definition of documents, has admitted electronic documents to the range of documents, which is unambiguously revealed by both legal regulation and terminology (Kengyel, Harsági, 2010).

New technical possibilities of recent years have challenged the civil proceduralists law setting out to provide a modern definition for "document". On the appearance of electronic documents, some elements of the old concept must be reconsidered. The definition of document-corresponding to the requirements of our days-may be formulated as follows: the recording of the content of human thought through signs, mainly characters or signs transformable into characters, serving the purpose of the expression of thoughts, where the base or medium and the form of recording are not relevant in themselves but are on the whole suitable for ensuring the permanent retention and reliable reproduction of thought content. (Harsági, 2005; Harsági, 2015)

Two decades after the first steps we can say, that litigious proceedings-in international comparison-are still rather resistant to the effects of e-justice. The eIDAS Directive, reforming the foundations of electronic identification, was adopted by the

European Parliament and the Council in the summer of 2014; following this in May 2015 the Hungarian Government adopted Decision No. 1295/2015. (V. 7.) Korm., in which it took the position that with regard to certain tasks of the court and prosecution service connected with the codes of administrative and civil procedure the delay observable concerning the establishing of electronic communication should be eliminated. The provisions of Act CCXXII of 2015 on the general rules of electronic administration and trust services are also applied.

If the direct examination or observation of a person, item, location or event is necessary to establish a significant fact in the action, the court shall order an inspection.

In Hungarian legal literature, we find a standpoint that lists the web sites as so-called "virtual locations" and therefore it can be the subject of the inspection. (Döme, 2018).

The court may order the inspection to be carried out via an electronic communications network (§ 329 HCCP). The performance the inspection and the statements and remarks made thereon, as well as the facts identified by the court, shall be recorded by the court in the minutes. The court may make image recordings, sound recordings, audio-video recordings and sketches of the object of the inspection. The objects produced for demonstration purposes during the inspection shall be attached to the minutes (§ 332 HCCP).

It is as well a common practice before filing the case that the plaintiff obtains a notarial certification of the current content of a website (so as to conserve it for the purpose to be later evidence before the court). This way he will be able to prove contents of the website later (after the changing or canceling the content of the website). It is accepted by the court and in these cases there is no need for IT specialists as an expert.

As to the case law Wikipedia is used by judges during evidentiary proceedings for clarification of notions of a new social phenomenon-such as a blog (Fővárosi Törvényszék, 22.P.25.970/2012/3.), flashmob (Fővárosi Törvényszék, P.25.027/2014/15.), in a meaningful manner, in actions related to right to privacy. In recent judicial practice, the Wikipedia website was used to explain the immunological technical terms used in a lawsuit related to the patent protection of pharmaceuticals. (Fővárosi Törvényszék, 3.Pk. 23.012/2021/5.)

Related to using Youtube in an action for press correction, a court of second instance ruled that the court of first instance should, if necessary in a case, look at the Youtube channel and watch the video published on this website. (Fővárosi Ítélőtábla, 32.Pf.21.075/2017/5-II.) In a lawsuit on copyright, besides many other means of evidence, the recordings shared on Youtube were also accepted as proofs on the nature, attendance of the music festival as well as the songs that have been heard there. Another

video, which was also available on Youtube proved the fact that the band has already published the tracks on YouTube before the festival. (Szekszárdi Törvényszék, 17.G.40.041/2014/28.) In an action related to right to privacy, the CD attached by the plaintiffs also proved that the record was available on YouTube. Since the claim also criticized the publication of the record on the Facebook profile of the defendant, the court of first instance stated that at the time of the court hearing, the video on the defendant's Facebook page could be accessed through Google's search, where the plaintiffs could be seen without screening. (Kúria. Pfv. IV.20.750/2016/8.)

The use of Google Maps is also becoming more common in the proceedings before the Hungarian courts. In order to determine the uniqueness of the map of the plaintiff-company in a lawsuit on copyright, the part of the map published by the defendant on the Internet-besides many other means of evidence,-was compared with the Google Maps map. (Fővárosi Törvényszék, 3.P.25.890/2012/10.) In another case, photos printed from the Google Earth site, were accepted by the court as evidence. (Miskolci Törvényszék, P.20.265/2014/67.) In an action on compensation of damage for a traffic accident, the expert was able to get accurate information about the road bend with the help of Google Maps, because the road map extract of the road maintainer did not contain proper information about the

geometry of the route. (Mezőtúri Városi Bíróság, 2.P.20.232/2010/63.)

In a father's action relating to his right of access to his child, the court applied the Google Maps application to determine the time spent on travelling between the parties' places of residence and based on this application it established that the distance between the respondent's former apartment and the applicant's apartment is 15 km, which may be covered in 30 minutes by car and 50 minutes by public transport, and that the respondent's new apartment is only 2 km closer to the applicant's residence, which shortens the journey time by 5 minutes based on the Google map data). (Fővárosi Törvényszék, 1.Pf.20.707/2018/6/II.)

In an action relating to the unlawful termination of public employee status and its legal consequences, the court established the facts of the case based on the submitted documents, *the dash cam recording* and the statements of witnesses heard by the court. The applicant had been employed by the respondent in public employee status as an ambulance driver. The applicant had an accident at a crossroads during a rescue operation. The labour court established based on the submitted dash cam recording of the ambulance that the crossroads where the accident happened was a blind one allowing for poor visibility; cross traffic from the right was fully concealed by a petrol station and a tilt lorry. (Fővárosi Közigazgatási és Munkaügyi

Bíróság, 58.M.401/2019/18.) The appellate court, upholding the judgment of the first instance court, emphasized that the dash cam recordings constituted relevant evidence[2].

Statutory regulation is mainly concerned with documents among electronic evidence. A public document can be issued in a paper form or as an electronic document. It shall be deemed original unless proven to the contrary, but the court may *ex officio* call upon the entity issuing the document to make a statement regarding its authenticity. It shall prove with full probative value that *a)* the issuing entity carried out the measure or adopted the decision with the content specified therein, *b)* the data and facts confirmed by the public document are true, *c)* the statement contained in the public document was made, and the place and manner of making that statement. Unless provided otherwise by law, for the issuance of an electronic public document, the entity authorised to issue shall affix to the electronic document a qualified or advanced electronic signature or stamp based on qualified certificates, as well as a timestamp, if required by law (§ 323 HCCP).

A private document shall have full probative value, if *a)* the document was written and signed by the issuing person with his own hand, *b)* two witnesses confirm that the issuing person signed the document not written with his own hand in whole or

2Fővárosi Törvényszék, 2.Mf.31.188/2020/5.

in part, or acknowledged his signature as his own, in front of them; for confirmation, the document shall be signed by both witnesses with their own hand, indicating their name and domicile or, in the absence thereof, place of residence in a legible manner, *c)* the signature or initials of the issuing person on the document is authenticated by a judge or a notary, *d)* the document is signed by a person entitled to represent the legal person, in line with the rules pertaining to him, *e)* the document was drafted and countersigned in the proper manner by an attorney-at-law or in-house counsel, confirming that the person signing the document signed the document drafted by another person with his own hand or acknowledged a signature as his own in front of that attorney-at-law or in-house counsel, *f)* the person signing the document affixed to the electronic document his qualified or advanced electronic signature or stamp based on qualified certificates, as well as a timestamp, if required by law, *g)* the electronic document is authenticated by the signatory through the Document Authentication Based on Identification service specified in a government decree, or *h)* it is created through a service, specified by an Act or government decree, where the service provider attributes the document to the issuing person through the identification of the issuer, and certifies the attribution to a person together or on the basis of data that can be traced back clearly to a signature made by the issuer with his

own hand; furthermore, the service provider records a certificate of clear attribution to a person into a clause attached to and forming an inseparable part of the electronic document, and signs it and the document with at least an advanced electronic seal and at least an advanced timestamp, or *i)*-unless otherwise provided by law-the issuing person's oral statement is provided in the E-administration Act according to the electronic administration body converted it into a written format supported by artificial intelligence, the draft of the statement converted into written format was approved by the issuer, and the document was authenticated. [(§ 325(1) HCCP].

Unless proven to the contrary, a private document of full probative value shall prove with full probative value that the signatory made, accepted or agreed to be bound by the statement recorded therein. The authenticity of a private document of full probative value needs to be proved only if it is questioned by the opposing party or proving its authenticity is considered to be necessary by the court. If the authenticity of a signature on a private document of full probative value is proved or not questioned, or unless suggested otherwise by the result of verifying at least the advanced electronic signature or seal or other data that can clearly be traced back to the of the signatory's own signature as part of a trust service used in a closed system, the text above the signature or stamp or, in the

context of electronic documents, the signed or stamped data shall be deemed authentic until proven otherwise, except if the document is affected by any irregularity or deficiency that subverts this presumption. If there is any doubt regarding the identity of the person signing or stamping an electronic document carrying at least an advanced electronic signature or stamp, or the integrity of the document itself, the court shall primarily contact the trust service provider that issued the certificate for the electronic signature or stamp, with a view to establish its authenticity. If there is any doubt regarding the data confirmed by the timestamp affixed to an electronic document, the court shall primarily contact the trust service provider that affixed the timestamp. If an electronic document was issued through a trust service used in a closed system, where the document is attributed to the signatory by the service provider, and the attribution and the data, which are clearly traceable to the own signature of the signatory, are certified in an authentic manner, the court shall primarily contact the trust service provider of the closed system. For electronic documents, the signed or stamped data, unless proven to the contrary, shall be deemed authentic based on the certification of the service provider making the storage, if the service provider *a)* verified the validity of the authentication of the electronic document upon its receipt for storage, *b)* performs storage as part of a

qualified archival service or electronic document storage central electronic administration service, as defined in the Act on electronic case administration and in accordance with the conditions laid down in a government decree, and *c)* the authenticity of the electronic document is certified in line with the provisions of the government decree. (§ 325 HCCP).

As a rule, the evidencing phase shall be performed by the court during a hearing. Evidence may be taken using an electronic communications network [§ 277 (3) HCCP]. If a party or another person involved in the action, a witness, or an expert needs to be interviewed in the course of taking evidence, the court may also conduct the interview using an electronic communications network (§ 280 HCCP).

The court may issue an order, at the request of a party or ex officio, that the interview of a party, another person participating in the action, a witness, or an expert, or the inspection, if not objected to by the holder of the object of the inspection, shall be conducted through an electronic communications network, if *a)* it seems expedient, and especially if it accelerates the proceedings, *b)* conducting the interview at the place of the hearing or the specified location of the interview would imply considerable difficulties or disproportionately high extra costs, or *c)* it is justified by the personal protection of the witness. The order on conducting an interview through an electronic

communications network shall be served by the court on all persons summoned together with the summons to the hearing, inspection or personal interview. The order on conducting an interview through an electronic communications network shall be sent by the court without delay to the court or other organ providing the separated premises for the purpose of conducting the interview through an electronic communications network (§ 622 HCCP).

In the course of conducting an interview through an electronic communications network, a direct and synchronised audio and video connection shall be established by technical means between the specified venue of the hearing, personal interview or inspection and the venue of the interview or inspection taken or conducted through an electronic communications network. An interview conducted through an electronic communications network may be conducted at the venue of the hearing, personal interview or inspection and multiple other locations used for conducting an interview through electronic communications network, if a direct connection can be established between such venues. The venue used for conducting an interview through an electronic communications network shall be provided by the court or another organ meeting all the requirements needed to provide for all the circumstances that are necessary for the

operation of the electronic communications network and conducting the interview (§ 623 HCCP).

A person interviewed through an electronic communications network and the holder of an object of the inspection shall appear and be present during the interview in the premises set up for the purpose of the interview within the building of the court or other organ. If an interview is conducted through an electronic communications network, the provisions pertaining to the publicity of the hearing shall apply, with the proviso that publicity shall be ensured at the specified premises of the hearing. In the premises set up for conducting an interview through an electronic communications network, the following persons may be present: *a)* the person interviewed through the electronic communications network, *b)* the person whose presence is permitted or required by an Act during the hearing, personal interview, or inspection with regard to the person interviewed through an electronic communications network, *c)* a person operating and managing the technical means of conducting an interview through an electronic communications network. The identity of the person interviewed through an electronic communications network shall be established by the chair presiding over the hearing or conducting the personal interview, or by the junior judge, if the personal interview or inspection is conducted by a junior judge. The chair or junior

judge shall also establish that only those persons are present in the place set up for taking the interview through electronic communications network whose presence is permitted by an Act, and that the interviewed person is not limited in exercising his procedural rights. The identity of the person interviewed through an electronic communications network shall be established *a)* on the basis of data provided by him to confirm his identity and address, and *b)* by presenting his official verification card or residence permit suitable for verifying the identity of the person through the technical means defined by law. If the court ordered the data of a witness to be kept separate and confidential, it shall be ensured at the time of presenting the official verification card or residence permit suitable for verifying the identity of the witness through technical means as defined by law that the presented document can be inspected only by the presiding judge or junior judge, if the interview or inspection is conducted by a junior judge. The court shall use electronic means or access databases directly in order to confirm that *a)* the data provided to certify the identity or address of the person interviewed through an electronic communications network are the same as those recorded in the official register, and *b)* the official verification card or residence permit suitable for verifying the identity of the person interviewed through an

electronic communications network is valid and reflects the same data as those recorded in official registers (§ 624 HCCP).

At the beginning of the interview, the chair or the junior judge, if the personal interview or inspection is conducted by a junior judge, shall inform the person interviewed through an electronic communications network that the interview is conducted through an electronic communications network. In the course of conducting the interview through an electronic communications network, it shall be ensured that the persons present at the premises of the hearing, personal interview or inspection can see the interviewed person present in the premises set up for conducting the interview through an electronic communications network, as well as all other persons present in the same place as the interviewed person. It shall also be ensured that all parts of the place set up for conducting an interview through an electronic communications network are visible to the chair or junior judge present at the specified place of the hearing, personal interview or inspection. It shall also be ensured that the interviewed person present in the place set up for conducting the interview through an electronic communications network can follow the course of the hearing (§ 625 HCCP).

The court may order the interview through an electronic communications network to be conducted in a manner that does not reveal the identity and location of the witness. The manner

of conducting the covert interview and the identification of the witness shall be in accordance with § 624 (see above), and all unique features that might identify the witness shall be distorted by technical means during the transmission. In the course of the covert interview, the chair may prohibit any question that may identify the contributor or his location from being asked or answered (§ 626 HCCP).

Gathering or preserving new types of evidence

In Hungary there is not a discovery or disclosure in the Anglo-American sense. But the new HCCP reintroduced the split system of procedural phases (which used to be applied in the Code of Civil Procedure of Plósz of 1911). According to the explanatory memorandum attached to the Draft Bill, the draft proposal aims to set up a procedural order that will render the course of the proceedings more predictable for the parties, because the split system of procedural phases makes clear the function and duration of the specific procedural phases, thereby establishing unambiguous frames for the performance, restriction or preclusion of specific procedural acts, which will promote not only the effectiveness of proceedings, but also their predictability. First instance proceedings are divided into two stages: the preparatory phase and the merits phase. This model places great emphasis on the preparatory phase. This system

provides possibility to concentrate the definition of the content and frames of the legal dispute in the preparatory phase (motions for evidence and means of evidence become fixed). However-according to the explanatory memorandum-the preparatory phase does not lack flexibility: the specific steps involved in this phase are decided by the court, which enables the court to decide on the method and course of preparation in line with the particular characteristics of the specific case (Köblös, 2016).

The new Act applies a wide range of preclusions. For example, after the closing of the preparatory phase, as a general rule, it is not possible to modify the claim or defence, and the submission of further evidence and motions is precluded. The aim of the restriction-besides preventing the protraction of proceedings-is to also enable both the court and the opposing party at some point to regard the frames and content of the legal dispute finally fixed and to ensure that following this nothing but the evidence taking procedure and the decision on the merits should take place based on the fixed allegations. The modification of the claim may be permitted following the dividing line only if such modification is related to a cause that cannot be attributed to the fault of the party concerned.

Concerning the new regulation it is not yet possible to account of the practical experiences as not even a year has passed since

the entry into force of the code, but a change may also be expected in the role of the hearing on the merits phase: the aim is to conduct the evidence taking concerning the legal dispute defined in the preparatory phase, which-as a result of the preparation-will become a lot more expedient and therefore one may expect an earlier decision on the merits of the case.

As to the third parties obligations: if the document is in the possession of a person who is not participating in the action, the court shall have the document made available by applying the rules on inspection. The situation is different, if the wittness is the one, who has the document in his possession. If requested by the court, the witness shall present for inspection any note, document or other item in his possession that can be used as evidence, or any part of it that relates to the action, unless such an item is held by the witness on behalf of a third party not participating in the action. [§ 296 (1) HCCP].

There is no explicit obligation for preserving the evidence, it is only a possibility on the request of the interested party. According to § 334 and 337 HCCP preliminary taking of evidence shall be performed at the request of the interested person, before the initiation or during the period of the action, whenever the statement of claim is considered suitable for litigation, if *a)* the taking of evidence may not be performed or would involve considerable difficulties during or at a later stage

of the action, *b)* the preliminary taking of evidence facilitates the avoidance of the action or its completion within a reasonable period of time, or *c)* performing the preliminary taking of evidence is permitted by law. The court shall decide on ordering the preliminary taking of evidence after interviewing the party with opposing interests orally or in writing, unless *a)* the party with opposing interests is unknown, or *b)* ordering the preliminary taking of evidence is a matter of urgency.

The scientific knowledge of the expert and its judicial control

One of the most important innovations in the regulation of the new HCCP relating to the demonstration of evidence is the reform of expert evidence: private expert opinions are also properly incorporated into the system. The party may supply expert evidence in three ways: by way of a private expert engaged by him, through an expert appointed for him in another proceeding, or via an expert appointed by the judge for him in the lawsuit.

Private expert evidence-according to the explanatory memorandum attached to the Draft Bill-is expected to put an end to the current practice leading to the protraction of proceedings under which private expert opinions are used not for the main taking of evidence, but with the aim of contesting

or challenging the professional competence of the expert appointed by the court.

According to the principle of party control the judge may not appoint the expert ex officio in general (only in cases, when the court is entitled to order the taking of evidence *ex officio* only based on special authorization).

Independence and impartiality of experts is guaranteed by the disqualification rules. According to this a person shall not be employed as an expert if 1) he participated in the case as a judge, or 2) he is a member or employee of a business association or service provider which participated earlier in the case as an expert or 3) he is a party, a person entitled or subject to the same right or obligation as a party, a person who demands the subject matter of the action or any part thereof for himself, or a person whose rights or obligations may be affected by the outcome of the action, 4) he is a relative of a party (or his representative), 5) he is a person who conducted any mediation procedure concerning the action, or 6) he is a person who may not be expected to assess the matter objectively for any other reason. [§ 301(1) HCCP].

How the judge could control the expert, is one of the most difficult questions. The judge has very restricted possibilities in practice to see through the content of the expert opinion on the merits. The most criticized weakness of the system is that

formally the HCCP prescribes the further possibilities, but because of the above mentioned fact the judges should trust and rely on experts. These possibilities are: the supplementing of a written expert opinion and the appointment of a new expert.

Conclusion-Future Outlook

The effect of IT on civil procedure law reveals a certain degree of cyclicity, it comes into focus again and again when civil justice is faced with some challenges stemming from major advances in technology. The first group of such issues arose at the end of the 1990s with the appearance of electronic documents, followed by the question of electronic communication (service of court documents, video conferences). Nowadays professionals working in the field are to cope with the gaining ground of *artificial intelligence (AI)* and the resulting challenges. Although Hungarian courts have carried out numerous developments in recent years by introducing, among others, e-files, client inspection and electronic payment systems, the distance hearing system (ViaVideo system) as well as the artificial intelligence-based speech recognition and transcription softwares, it should still be noted in general that in recent years-due to its new, explosion-like development-technology has “greatly run away from” regulation, and the arising gap cannot always be bridged over by judicial practice.

The area in Hungary where this gap is smaller, but clearly perceivable, is the emergence of new (electronic) means of proof and their integration into the civil action. Apart from the means of proof the fate of which has already been settled (for example, electronic documents), there are also such means to which the legal system has not been able to react at a proper pace or in an appropriate manner. In this regard, it would be necessary to examine, on the one hand, whether or not Acts on procedure should elaborate new rules relating to recently emerging electronic means of proof. Since by today the internet has become the most relevant source of information for both the court and the parties, we should consider how information found on the internet could be used during civil proceedings. Evidently, this question cannot be treated and answered uniformly due to the diversity of information available on the internet. However, this question promptly leads us back to the world of AI, since information accessible on the internet-exactly because of its quantity-sometimes requires us to apply a new approach and novel methods. This raises the question whether a new legal regulation or a substantial modification of existing regulation will be necessary if AI gains more ground in the examination of evidence. With regard to the introduction of new rules, regard must be had to the fact that these rules may change the conduct of parties and other persons involved in the legal

action; for example, parties may have to pay increased attention to the preservation of evidence.

This paper contains a part aimed at reviewing judicial practice, which may provide assistance to reveal whether there is an increasing tendency toward the use of new types of means of proof in civil proceedings. The question arises how these new means may become integrated into the traditional system of demonstration of evidence, and (if applicable) what may hinder the admissibility of such types of evidence; how their authenticity is to be determined by the court and proven by the parties; in what form these types of evidence are to be presented to the court by the parties, and how such evidence should be examined by the latter. Especially due to their fast-changing and changeable content it may raise some difficulty for the court how to treat a printed version and how such information may be preserved and retrieved in an authentic form. The problem of authenticity and unadulteratedness comes to the foreground due to a greater risk of manipulation compared with traditional means of proof. Moreover, judges have less experience in this field, so often an IT expert may become necessary. All this is combined with the issue of unlawfully obtained evidence as reflected in the evolving practice of the new HCCP. This could raise the question of reconsidering when judges themselves should be permitted to do research on the internet (basically ex

officio), and whether they should be allowed to use the obtained information to establish the facts of the case and evaluate the evidence.

The issue of the Internet of Things (IoT) may require a new approach (and maybe even new regulation) due to its increasing spread. IoT enables us to connect devices on the internet and to save data to the local device as well as to transmit data between the connected devices and, possibly, to the cloud (too). So-called smart devices can include household gadgets, medical or office equipment, sensors and public utility meters, but one may also list here smart watches and, in a given case, also vehicles. At this point, the question of smart cities (e.g. with regard to parking cases) and smart homes and the main subject of my planned research become inseparable. In the near future-as far as it may be predicted at present-IoT could become relevant in the following fields apart from the above-mentioned: competition law, labour law, medical malpractice cases etc.

Nowadays a lot of countries are conducting experiments to work out how artificial intelligence could be used to serve the administration of justice. However, it is difficult to predict how AI will transform the justice system. We have firmer ground to stand on when reviewing what AI is capable of (such as, for example, predictive encoding, predictive analytics, machine learning). The exploitation of these possibilities by larger law

firms has considerably changed the work of lawyers already. How the work of lawyers will become restructured in the future may be of crucial importance. We may proceed from the fact that AI will not seriously endanger the work of judges (as a whole) for a considerable time; it will rather be present having a supportive character. It will be worth finding an answer to the question as to what fields allow for a realistic prospect of effective cooperation between man and machine and, thus, what the future generation of lawyers should be prepared and trained for.

In the courts AI is rather expected to play a role in the preparation and support of decisions (e.g. Big Data analysis), or it may support the judge's work as an expert (e.g. in the field of handwriting analysis, facial recognition or the interpretation of radiograms). Moreover, automatic speech recognition systems enable real time recording of trials, which may improve courtroom culture and promote effectiveness. Introduction of the former has already started in Hungary. In abroad algorythms analyzing and evaluating jurisprudence exist already, which may be an important step toward predictability. The application of AI may also generate a significant change in cross-border disputes, since in essence it could substantially reduce the extra costs stemming from the international character of the lawsuit (e.g. AI may be used in translation and interpreting, and video

conferences can often replace travel). So-called self-enforcing contracts will pose a challenge to traditional forms of claim enforcement, while the use of blockchain technologies could possibly present another challenge with regard to registration procedures.

These possibilities provided by technology also imply legal and ethical problems, such as the responsibility of the creators of AI and the possibility for the court to hear AI (and in what capacity). It raises further questions whether the judge understands the operating mechanism of AI while possibly relying on it. It could be difficult to handle the fact that no human element is involved in the learning process of deep-learning algorythms. Possibilities for tracking this process and the relating system of liability have not been duly explored or thought over.

Opportunities offered by Legal Tech are presumed to bring about substantial changes in the work of law firms (mainly with the help of document analysis, document drafting and risk analysis). The question may arise as to how this process will influence the competitiveness of smaller law firms. Due to quantative factors some differences may be expected in the useability of Legal Tech between larger and smaller countries.

If, in the future, we replaced the human factor with algorythms in any field of justice (and we thought in terms of decisions

made by these algorythms), this would by all means lead to a change in codification techniques-legal regulations would have to appear in a form allowing them to be processed by a machine (algorythmic thinking).

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